

Franchise Tax Board**ANALYSIS OF ORIGINAL BILL**

Author: Duvall Analyst: Angela Raygoza Bill Number: AB 79
Related Bills: See Legislative History Telephone: 845-7814 Introduced Date: December 19, 2008
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Disaster Loss Deduction/Excess Loss Carryover/Orange County Wildfires November 2008

SUMMARY

This bill would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the wildfires that commenced in November, 2008, in Orange County.

This analysis will not address the bill's changes to the Property Tax Law, as they do not impact the department or state income tax revenue.

PURPOSE OF THE BILL

According to the language of the bill, the purpose of this bill is to provide immediate tax relief to individuals and businesses affected by the wildfires.

EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would be effective and operative immediately upon enactment.

POSITION

Pending.

ANALYSIS**FEDERAL/STATE LAW**

Under federal and state law, a casualty loss is defined as the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual. A disaster loss occurs when business or personal property is completely or partially destroyed as a result of a fire, storm, flood, or other natural event in an area declared to be a disaster by the President of the United States.

Board Position:

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Department Director**Date**

Selvi Stanislaus

01/26/09

Existing federal and state law allows an individual taxpayer with a non-business casualty/disaster loss that is not reimbursed, by insurance or otherwise, may deduct such losses to the extent that each loss exceeds \$100 and aggregate net losses for the taxable year exceed 10% of adjusted gross income. Additionally, a taxpayer can elect to file an amended return to deduct a casualty loss in the taxable year prior to the loss year to receive a refund more quickly. However, this election only applies to casualty losses occurring in a Presidentially-declared disaster area. This election may be made for any Presidentially-declared disaster prior to passage of any state legislation allowing special carryover treatment because California conforms to federal disaster tax law treatment. The election is not available for a Governor-only declared disaster until enabling state legislation has been enacted.

State tax law identifies specific events as disasters and excess disaster losses are allowed special carry forward treatment. That is, 100% of the excess disaster loss may be carried over for up to 15 taxable years. In addition, for disasters that were the subject of a Governor's proclamation, but not the subject of a Presidential disaster declaration, enactment of state law identifying a specific event as a disaster for state tax law purposes authorizes the taxpayer to elect to deduct the disaster loss on the return for the prior taxable year.

PROGRAM BACKGROUND

On November 15, 2008, Governor Arnold Schwarzenegger proclaimed a state of emergency declaring the wildfires that occurred in Orange County to be a state disaster. On November 18, 2008, President George W. Bush proclaimed a federal disaster for the wildfires that occurred in Los Angeles, Orange, Riverside, and Santa Barbara Counties.

THIS BILL

As a Presidentially-declared disaster, taxpayers are allowed to deduct the disaster losses in the year the loss occurs or in the preceding year by filing an amended return.

This bill would allow special carry forward treatment for up to 15 taxable years for losses sustained as a result of the wildfires that occurred in Orange County during November, 2008.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs or operations.

LEGISLATIVE HISTORY

AB 15 (Fuentes, 2009/2010) would allow taxpayers disaster loss treatment for losses sustained as a result of the wildfires that occurred in Los Angeles County during November, 2008. This bill is currently in the Assembly Revenue and Taxation Committee.

AB 50 (Nava, 2009/2010) would allow taxpayers disaster loss treatment for losses sustained as a result of the wildfires that occurred in Santa Barbara County during November, 2008. This bill is currently in the Assembly Revenue and Taxation Committee.

AB 62 (Nava, Stats. 2007, Ch. 224) allows taxpayers disaster loss treatment for losses sustained as a result of the wildfires that occurred in Ventura county in 2006, and in El Dorado, Santa Barbara, and Ventura Counties during 2007.

SB 1064 (Hollingsworth, Stats. 2008, Ch. 386) allows taxpayers disaster loss treatment for losses sustained during calendar year 2007 for wildfires that occurred in Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura Counties and wind damage that occurred in Riverside County during October, 2007. In addition, the losses sustained in Butte, Kern, Humboldt, Mariposa, Mendocino, Monterey, Plumas, Santa Barbara, Santa Clara, Santa Cruz, Shasta, and Trinity Counties during May, June, and July, 2008, and the July, 2007, wildfire and July, 2008, rainstorms that occurred in Inyo County.

SB 38 (Florez, Stats. 2007, Ch. 222) allows taxpayers disaster loss treatment for losses that occurred as a result of the wildfire in Riverside County in October, 2006.

SB 114 (Florez, Stats. 2007, Ch. 223) allows taxpayers disaster loss treatment for losses that occurred as a result of the freezing conditions that occurred in California in January, 2007. The counties affected by that disaster are El Dorado, Fresno, Imperial, Kern, Kings, Madera, Merced, Monterey, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Stanislaus, Tulare, Ventura, and Yuba.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue impact:

Estimated Revenue Impact of AB 79 Effective Immediately Upon Enactment Enactment Assumed After June 30, 2009			
2008-09	2009-10	2010-11	3-Year Impact
-\$3,000	+\$2,000	+\$1,000	\$0

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

The revenue impact of this bill would depend on the extent affected taxpayers file amended 2007 tax returns and report a disaster loss deduction as a result of the wildfires that occurred during November, 2008, in Orange County.

Total property damages attributable to the November, 2008, Orange County wildfire are estimated at \$90 million (202 residences destroyed at an average home value of \$446,000). It is estimated that 90 percent of residential losses are insured. Therefore, uninsured losses are approximately \$9 million (\$90 million X 10%). Assuming an average marginal tax rate of 7 percent, this would result in a disaster loss deduction of approximately \$630,000 (\$9 million X 7%).

Losses may be used in the year prior to the disaster, the year of the disaster, or carried forward to future years. This bill extends the period to report the disaster loss deduction on an amended 2007 return from April 15, 2009, to October 15, 2009. Approximately 1% of taxpayers would take advantage of this extension, for a revenue loss of approximately \$6,000 (\$630,000 X 1%). Of this loss, approximately one-half would be applied to reduce tax liabilities (-\$6,000 X 50% = -\$3,000). This accelerated loss of \$3,000 is accrued back to the 2008-09 fiscal year because it is attributable to a prior tax year.

Because these losses would be used on amended 2007 returns, they would not be available to offset income in later years. Future years would show offsetting revenue gains. Departmental data suggest that offsetting revenue gains would be approximately 50 percent of losses claimed in prior years in 2009-10, or approximately \$2,000 (\$3,000 X 50%), and 30% in 2010-11, or approximately \$1,000 (\$3,000 X 30%). The overall revenue impact for the three-year period is zero (-\$3,000 + \$2,000 + \$1,000).

LEGISLATIVE STAFF CONTACT

Legislative Analyst
Angela Raygoza
(916) 845-7814

Revenue Manager
Rebecca Schlusser
(916) 845-5986

Asst. Legislative Director
Patrice Gau-Johnson
(916) 845-5521

angela.raygoza@ftb.ca.gov rebecca.schlusser@ftb.ca.gov patrice.gau-johnson@ftb.ca.gov